IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 863 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RS NANAVATI
Versus
STATE BANK OF INDIA AND OTHERS

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Appearance :
MR JR NANAVATI for Petitioner.
MR PRANAV G DESAI for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/11/2006

ORAL JUDGMENT

1. The petitioner, who is serving as a Medical Officer in the State Bank of India has challenged the rationality and propriety of the decision taken by the bank in not giving him the benefit of housing loan, motor vehicle loan and other benefits such as scholarship to the children of the

petitioner, home town concession, festival loan etc. The petitioner was appointed as a Medical Officer by order dated 21st July, 1983. As per the appointment order, the petitioner was appointed in the pay scale of Rs.700-1150/- in scale-I. The terms and conditions in connection with the appointment of the petitioner are also attached along with the appointment order, which is at Annexure-A in the compilation.

2. The case of the petitioner is that he was appointed as full time medical officer and his services were governed by the conditions contained in Determination of the Terms and Conditions of Service Order, 1979. The case of the petitioner is that he being a full-time employee of the State Bank of India, he is entitled to get all benefits like housing loan under the Housing Loan Scheme of the bank, motor vehicle loan as well as other benefits regarding scholarship to children, staff consumer loan, festival loan etc. It is the say of the petitioner that such benefits are given to all other permanent employees of the bank and on that line, the petitioner is also entitled to get such benefits.

3. The petition is resisted by the respondent bank by filing affidavit-in-reply, which is at page 44 in the compilation. In paragraph 4 of the affidavit-in-reply, it is stated as under :

> “I say that the petitioner was engaged in the respondent bank as a part-time medical officer on specific terms and conditions. I say that the petitioner is governed by the said terms and conditions of service and I crave leave to refer to and rely upon respondent bank's letter dated 21.7.1983 as well as Reference Book on Staff Matters and relevant terms and conditions, if and when necessary, at the time of hearing of this petition.”

4. In paragraph 5 of the affidavit-in-reply it is stated as under :

> "I say that as a welfare measure of its employees and pensioners, the respondent bank evolved a scheme of opening dispensaries at its various offices like local Head Office, Zonal Offices and Branches where the number of staff is large as also in residential areas. I say that for the purpose of providing required medical attention, the respondent bank also engaged professional doctors as medical officers who are required to attend to these dispensaries for four hours on regular week days and two-and-half hours on Saturdays. I say that such medical officers are not required to perform any duties related to banking, but they are required to take care of the medical needs of the employees, pensioners or their family members."

5. It is further averred as under in paragraph 6 of the affidavit-in-reply :

> "I further say that under Section 43 of the State Bank of India Act, 1955, the respondent bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions and determine the terms and conditions of their appointment and service. I say that in exercise of the powers conferred under the said section, the Executive Committee of the Central Board (ECCB) of the respondent bank determined terms and conditions of service of the aforesaid medical officers known as "Uniform Terms and Conditions of Service" (hereinafter referred to as "UTCS"). I say that appointment and service conditions of medical officers in the respondent bank are governed by the said UTCS. A copy of the

said UTCS was handed over to the petitioner together with his appointment letter. I say that the said UTCS were revised, improved and updated from time to time. I say that distinct from the UTCS in respect of medical officers, the General Officers in the respondent Bank are governed by the Service Rules known as "Determination of Terms and Conditions of Service (hereinafter referred to as "DTCS") Order 1979 read with State Bank of India (Supervising Staff) Service Rules. I say that the duties, responsibilities and the nature of service are different in the case of medical officers as compared to General Officers and, therefore, the petitioner is not governed by either the SBI (Supervising Staff) Service Rules or the DTCS Order. I say that, therefore, eventhough erroneously the petitioner had signed form "A" at the time of his appointment, it is clarified that he is not governed by the DTCS Order but by the specific and distinct terms and conditions of service decided by the ECCB of the respondent Bank. I say that mere signing of form "A" does not confer upon the petitioner any right to be governed by certain sets of rules, which are not applicable to the petitioner, in terms of the State Bank of India Act, 1955."

6. It is also stated in paragraph 9 of the affidavit-in-reply that the medical officers are not full time employees of the respondent bank and the part time medical officers are permitted to carry on their private practice or engage themselves in part-time employment elsewhere. It is further stated that the petitioner is a part-time medical officer and he cannot claim parity with other full time officers as regard the benefits available to them.

7. Mr.J.R.Nanavati, learned senior counsel appearing for the

petitioner vehemently submitted that as per the appointment order, the petitioner is regularly recruited as medical officer in pay scale of Rs.700-1150/- and as per the appointment order, he is entitled to dearness allowance, city compensation allowance, gratuity, contributory provident fund, etc. He submitted that, therefore, the petitioner is not a part time employee but he is a full time employee and he is entitled to all the benefits such as housing loan, scholarship to the children etc., at par with regular employees of the bank. Mr.Nanavati also submitted that as per the scheme framed by the bank in connection with housing loan, which is statutory, all the employees are entitled to get housing loan and, as the petitioner is a regular full time employee, the petitioner is also entitled to get the benefit of housing loan and he should not be deprived of such benefit. Accordingly, it is submitted that as per the scheme for housing loan, the petitioner is entitled to get the same. It is also submitted by Mr.Nanavati that the petitioner is not governed by UTCS as the same were not applicable at the time when he was appointed. Mr.Nanavati further submitted that action of the bank in not giving such benefits to the petitioner is arbitrary and discriminatory. He further submitted that another doctor namely, S.N.Doctor was given the benefit of Car loan and, therefore, the petitioner could not have been denied such benefit.

8. On the other hand, learned advocate Mr.Pranav G.Desai submitted that so far as medical officers are concerned they form a separate class and they are required to perform only fixed hour duty, which is not the case so far as other regular employees are concerned. It is submitted that the medical officers are even permitted to do private practice after the stipulated duty time of four hours. It is also submitted that at the relevant time, as per the UTCS, the petitioner was not entitled to the benefit of housing loan or scholarship to the children and whatever

benefits are available to the petitioner are already pointed out to him at the time of his appointment, as the service conditions are already attached with the appointment order of the petitioner. It is also submitted that the petitioner having accepted the terms and conditions attached with the appointment order, now, cannot ask for aforesaid benefits. Mr.Desai has further submitted that if somebody has been given the aforesaid benefits contrary to rules or policy that would not give any right in favour of the petitioner and under these circumstances, it cannot be said that aforesaid benefits are available to the petitioner.

9. In this connection, appointment order of the petitioner, which is at Annexure-A, page 24, dated 21st July, 1983 is required to be taken into consideration. As per terms and conditions of service attached with the appointment order, which is at page 26, the petitioner was entitled to certain benefits such as dearness allowance, compensatory allowance, privilege leave, casual leave, sick leave, medical facilities, etc., and even the working hours are prescribed as four hours on week days and two and a half hours on Saturdays. Accordingly, so far as medical officers are concerned, separate terms and conditions have been evolved by the bank treating them as a separate class. As per the terms and conditions of service, certain benefits are given to such medical officers and as pointed out earlier, such benefits include Dearness allowance, privilege leave, compensatory allowance, medical benefits, casual leave, sick leave etc. Even such medical officers are permitted to charge visiting fees at the time of visiting a patient as prescribed in column-(k) of the terms and conditions of service.

10. Considering the aforesaid service conditions, in my view, it is clear that the medical officers appointed in the bank are treated as a separate class altogether and their working hours are also different as compared

to regular employees, as they are required to work for four hours on week days and two and a half hours on Saturdays. Not only that the medical officers are not required to do banking business and they are also permitted to do private practice. The bank in its wisdom has given certain benefits to medical officers such as compensatory allowance, privilege leave, sick leave, casual leave, etc. As per the terms and conditions of service, the petitioner and such other medical officers are entitled to only those benefits and no other benefits are made available to them, which are claimed by the petitioner in this petition. The petitioner having accepted the said terms and conditions, cannot ask for any other additional benefits which are not provided in the terms and conditions of service on which the petitioner was appointed.

11. Apart from that, in my view, it cannot be said that the petitioner has been given any discriminatory treatment and looking to the nature of the work and duty hours prescribed for medical officers, they are treated as a special class altogether and all such medical officers are subjected to UTCS. Therefore, in my view, there is a considerable force in the argument of Mr.Desai that the doctors are required to perform only four hours duty and terms and conditions of their service have been annexed with their appointment order, which is accepted by the petitioner. It is also rightly submitted by Mr.Desai that such terms and conditions of service were in consonance with the UTCS applicable at the relevant time, and such UTCS are amended from time to time. In such circumstances, it cannot be said that the bank has acted in a discriminatory manner in not giving additional benefits to the medical officers, which may be available to the regular employees, who are required to perform more onerous duty with the bank and who are required to perform duty for more than 7 to 8 hours as the case may be. It may be true as argued by Mr.Nanavati that as per the housing loan

scheme framed by the bank all employees are entitled to get the benefit of the same but so far as medical officers are concerned, they are treated as a separate class and they are subjected to separate terms and conditions and as per the same, if some benefits are not given to the petitioner it cannot be said that action of the bank is in violation of articles 14 and 16 of the Constitution of India, as there is a reasonable classification about two sets of employees and such classification is on the basis of nature of duty and working hours of the concerned employees of the bank.

12. Under these circumstances, as per the terms and conditions prescribed for medical officers, the petitioner is entitled to get the benefit of compensatory allowance, dearness allowance, privilege leave, travel concession, casual leave, medical facility, gratuity, provident fund contribution etc. Under these circumstances, the petitioner who has been appointed to work as a medical officer in the bank, is entitled to get the benefits only as per the UTCS, which are applicable to all doctors. Therefore, it is not relevant whether the petitioner was appointed on part time basis or full time basis. The petitioner and such medical officers are entitled to the benefits given to them as per the terms and conditions evolved by the bank by exercising its statutory powers for framing such terms and conditions, therefore, it cannot be said that any discriminatory treatment is given to the petitioner. Even assuming that somebody else has been given the benefit wrongly, it would not confer any right in favour of the petitioner to get such benefits.

13. Under these circumstances, when the bank has framed a rational policy for medical officers, who are required to perform fixed hours duty, by giving them certain benefits and not extending few benefits, it cannot be said that bank has acted in an arbitrary manner.

14. In view of what is stated herein above, I do not find any substance in this petition and the same is dismissed. Rule is discharged with no order as to costs.

(P.B.Majmudar, J.)

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